


Judge Patti B. Saris

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that party alleges personal injury that is fairly traceable to the challenged conduct and likely to be redressed by the requested relief.” *Asarco, Inc. v. Kadish*, 409 U.S. 605, 615 (1989) (emphasis in original) (citations omitted). Contrary to plaintiffs’ contention, each individual plaintiff must establish standing in multi-plaintiff cases. *See, e.g., American Booksellers Foundation for Free Express v. Dean*, 202 F. Supp. 2d 300, 310-15 (D. Vt. 2002) (court must “address whether each Plaintiff has demonstrated standing to bring its claims”).² Thus, the Court should dismiss the claims against GSK advanced by the *individual* and *association* plaintiffs.

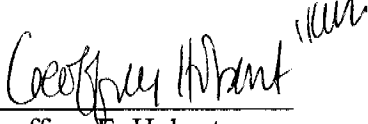
Other than THWF and Carpenters Fund, none of the other *benefit plan* plaintiffs can pursue any of their claims either. Only the THWF (in the Master Complaint) and the Carpenters Fund (in its affidavit) have alleged that they purchased any GSK Medicare drug. Some of the other plans allege in affidavits that they paid for GSK drugs that are not Medicare eligible, but there is no reference to these drugs (or to any improprieties relating to these drugs) anywhere in the Master Complaint. Moreover, even if these drugs *were* mentioned in the Master Complaint, they would relate to the Class 2 non-Medicare “PBM” allegations, which are entirely devoid of particulars and must be dismissed for the reasons expressed in the defendants’ consolidated memoranda.

² *Houlton Citizens’ Coalition v. Town of Houlton*, 175 F.3d 178 (1st Cir. 1999), on which plaintiffs rely, supports GSK. There, the plaintiffs were equally injured by a facial challenge to the constitutionality of a local ordinance. Here, by contrast, the only plaintiffs that can possibly show injury are THWF and Carpenters Fund.

Thus, the Court should enter an order limiting the claims against GSK to those asserted by two plaintiffs (THWF and the Carpenters Fund), as they relate to alleged overpayments under Medicare Part B (Class 1) for two GSK drugs, Kytril and Zofran.

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Respectfully submitted,



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